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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,257	01/22/2002	Frederick R. Bean	TN-2239	3692
7590 Adan Ayala, Esq. Black & Decker Inc. 701 E. Joppa Road, TW-199 Towson, MD 21286			EXAMINER NGUYEN, PHONG H	
			ART UNIT 3724	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FREDERICK R. BEAN, PETER CHAIKOWSKY,  
ROBERT P. WELSH, CRAIG A. OKTAVEC, MARK E. BRUNSON,  
JAMES R. PARKS, GREGG L. SHEDDY and ADAN AYALA

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Appeal 2009-1211  
Application 10/054,257  
Technology Center 3700

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Decided: <sup>1</sup> May 14, 2009

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Before WILLIAM F. PATE III, LINDA E. HORNER  
and STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304 (2008), begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or the Notification Date (electronic delivery).

The Appellant appeals under 35 U.S.C. § 134 (2002) from the final rejection of claim 13 under § 103(a) as being unpatentable over Chen (US 5,778,747, issued Jul. 14, 1998) and Meredith (US 5,957,021, issued Sep. 28, 1999). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We REVERSE.

Claim 13 is the sole claim on appeal:

13. A chop saw comprising:  
a base assembly; and  
a saw assembly pivotably attached to the  
base assembly, the saw assembly comprising an  
upper blade guard, a plate rotatably attached to the  
upper blade guard, a lower blade guard rotatably  
attached to the plate, and a screw engaging the  
upper blade guard for fixing the plate;  
wherein at least one of the upper blade guard  
and plate have a first tab disposed near the screw  
and extending outwardly and substantially  
perpendicularly to the at least one of the upper  
blade guard and plate, the first tab extending from  
the at least one of the upper blade guard and plate  
a first distance, the screw being required to be  
moved a second distance longer than the first  
distance in order to pivot the plate so that the lower  
blade guard contacts the screw upon rotation of the  
lower blade guard,  
wherein the lower blade guard contacts the  
screw upon rotation of the lower blade guard after  
the screw has been moved the second distance.

The Examiner finds that Chen discloses each limitation of claim 13 except for the limitations expressed in the “wherein” clauses. (*See* Ans. 3). The Examiner concludes that it would have been obvious to provide Chen’s

face plate a first tab as taught by Meredith for forcing the user to withdraw the fastener a sufficient amount to allow the plate to be pivoted. (Ans. 3).

The Examiner further concludes that, “[d]ue to the small tolerance between the plate and the lower guard, as the screw is moved a second distance, the lower guard contacts the screw upon the rotation of the lower guard.” (Ans. 3; *see also* Final Office Action, Jun. 26, 2007 at 2). The Examiner concludes that:

In Chen’s saw assembly, there is a small tolerance between the rotatable lower blade guard 142 and the plate 88; and the screw has a length that is much longer than the thickness of the plate 88 and the tolerance between the rotatable lower blade guard 142 and the plate 88 (see Figs. 1 and 3, and the first sketch). . . . Therefore, when the screw is withdrawn to a second distance, the screw contacts the rotatable lower blade guard 142 . . . .

(Ans. 4). At one point, the Examiner appears to go so far as to find that the tolerance between the rotatable lower blade guard and the face plate of Chen’s miter saw is between  $\frac{1}{16}$  inch and  $\frac{1}{8}$  inch (*see id.*) even though Chen does not appear to describe or show dimensions of any parts of the miter saw.

The Examiner finds that Chen does not disclose a first tab as recited in claim 1. (Ans. 3). Neither does Chen disclose or suggest the distance that a screw attaching Chen’s face plate to the upper blade housing might have to be loosened to allow such a tab to clear the screw in order to pivot the face plate. The Examiner does not appear to find that any loosening of a screw attaching Chen’s face plate to the upper blade housing, however small,

would cause the lower blade guard to contact the screw upon rotation of the lower blade guard. Chen does not describe the tolerance between the face plate and the lower blade housing as being so small that, as the screw is moved the second distance, the lower blade housing necessarily contacts the screw upon the rotation of the lower blade housing.

The Examiner finds that Meredith does not disclose contact between a screw engaging the upper blade guard for fixing the plate and a lower blade guard. (Ans. 4). The Examiner articulates no reasoning to support the conclusion that the teachings of Chen and Meredith would have provided one of ordinary skill in the art reason to modify Chen's miter saw so that moving a screw a distance longer than the distance the tab would extend from the face plate would result in the lower blade housing contacting the screw upon rotation of the lower blade housing. Absent such reasoning, the conclusion of obviousness is not sustainable. See *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The Appellants have shown that the Examiner erred in rejecting claim 13 under § 103(a) as being unpatentable over Chen and Meredith.

#### DECISION

The Examiner's rejection of claim 13 is REVERSED.

#### REVERSED

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Appeal 2008-1211  
Application 10/054,257

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